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Montesquieu

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Session 1: Oct. 5, 1965

Leo Strauss: Let me see. Now he mentions the fact that Montesquieu particularly liked one kind of confederacy, the Lycian[1] Confederacy. Now "In the Lycian Confederacy," Hamilton says, "which consisted of twenty-three cities or republics, the largest were entitled to three votes in the common council, those of the middle class to two, and the smallest to one. The common council had the [power of] appointment of all the judges and magistrates of the respective cities. This was certainly the most delicate species of interference in their internal administration; for if there be any thing that seems exclusively appropriated to the local jurisdictions, it is the appointment of their own officers. Yet Montesquieu, speaking of this association, says: 'Were I to give a model of an excellent Confederate Republic, it would be that of Lycia.'"[i] Hamilton hands it over to Montesquieu for very good reasons. This is in *Federalist* No. 9.

And now regarding the separation of powers, this comes later—that is, Madison, No. 47 following, where also Montesquieu is referred to: "The oracle who is always consulted and cited on this subject"—the separation of powers—"is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this point. The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system"[ii]—and so on.

[2][S]o you see,[3] I don't believe they speak with any praise, with any comparable praise, of any political theorist throughout the *Federalist Papers*. So one can safely say he is *the* authority for the authors of the *Federalist Papers*, and therewith, with a certain modification, for the United States Constitution itself. So this is alone a reason why American political scientists should at least have some acquaintance with Montesquieu.

There is another reason, which is more technical, but for us—being technical people of a kind—no less important. And that has to do with the conception of political science as such. Political science has undergone in the course of its life a number of transformations. In the first place, to say something which is not the first in time: the separation of political science from political philosophy. But[4] the other point, which is earlier, in a way, is the distinction between political science and another social science called sociology. Now sociology emerged as such[5] in the early nineteenth century, but what it

[i] *Federalist Papers*, IX.
[ii] *Federalist Papers*, XLVII.

stands for is earlier[6]: the thought that political society is only a *kind* of society, or a *segment* of society, and that society as such—the subject of sociology, the study of society—is more fundamental.

Now we can perhaps state this more generally as follows: At the extreme end of the spectrum, or at one end, we would find the notion that political science as such must be transformed into sociology—well let us call it "political sociology," but "sociology" is a noun and "political" is only the adjective. And political sociology would then mean, if I understand what . . . the scientific explanation of political phenomena—the scientific explanation. But I think it is particularly . . . in public law, no scientific explanations are given by the men who interpret the law. They want to find out what the law is, but if you want to find out how it comes that this justice takes this line invariably, and another this one,[7] then you go into an explanation in terms of his social status, perhaps his digestive system, and other things to give a scientific explanation of political phenomena. And that is part of a broader change which one can say, which one can describe as an attempt to reduce the political to the sub-political, or the rational to the sub-rational, the human to the sub-human; and that is a very long story with which we will be confronted when studying Montesquieu.

Now something of this kind, of this distinction between political science and sociology is reflected in the title of the book—the title of the book is not *Laws*, *On Laws*, but *On the Spirit of Laws*, something more fundamental than the laws, as you will see when we come to the discussion of the title. Now let us briefly consider in a sweeping manner the discussion of laws prior to Montesquieu. Of course we disregard entirely the merely juristic discussions, I mean what lawyers wrote about the laws of this or that country or province, and so on. Now the oldest writing on laws which we have is what?

Student: Plato's the *Laws*.

LS: Plato's *Laws*, yes. Now what is that? What, I mean, what is it about?

Student: A recipe for founding a city.

LS: Yes, or to be slightly more loyal to the title, a recipe to legislation, to a legislator who founds a new city, a giver of a new code. The other great work of Plato to which the *Laws* is related is, as you know, the *Republic*, and the title of the *Republic* means in Greek, *politeia*, and therefore "republic" is[8] not altogether a good translation—*politeia* can also be translated by "regime," and it was understood that the laws are essentially relative to the regime. Democratic laws differ from oligarchic laws, and the difference is due to the difference between democracy and oligarchy. At any rate, in Plato's order, the *Laws* presents a second-best regime, which, being second-best, has many laws; and the best, in the *Republic*, has very few laws. Good. Now, what is the next great work on laws, which is still available, at least, and remembered?

Student: The *Athenian Constitution*?

LS: No, that you cannot . . . Cicero's *Laws*—which is the sequel to Cicero's book the *Republic*.[9] Cicero discusses in both works the *Roman* regime, the Roman laws, with the understanding, what is Roman is best. So in other words by discussing the Roman laws he discusses the best laws, the laws belonging to the best regime.

Now, a word about Aristotle in this connection, his *Politics*, which is of course not directly a work on law. The *Politics* is meant to be subordinate in rank to his *Ethics*, his doctrine of virtues and vices. And this is implied also in Plato and Cicero. Now the norms of right conduct came to be understood in post-Aristotelian times as the *natural* law, the natural law. And as a consequence, one could say, the overriding considerations of people dealing with politics became *legal*, legal—if natural law is the legal. It is interesting that the political work of Thomas Aquinas, *On the Government of Princes*, does not form a part of his *magnum opus*, his *Summa Theologica*, but there is what people call the treatise on laws, [which] forms a very important section of the *Summa*.

Now,[10] there is an immense literature both pre-Thomistic and after Thomas, perhaps culminating in Suarez's *Treatise on Laws and God the Legislator* in the early seventeenth century.[11] [T]hese are characteristic and classic *specimina* of the treatment of law, of the best laws, or at least of how laws should be. In Hugo Grotius' work *On the Right of War and Peace* he speaks disapprovingly of Bodin, a famous French political writer of the sixteenth century, that he had not properly distinguished in his work law and politics. And the distinction corresponds to that between what is right—law—and what is useful or expedient—the province of politics. This[12] implies of course that the political questions *par excellence* are not legal questions, [but] are trans-legal.[13] [B]ut still, Grotius still means of course law is higher in dignity, and so for practical purposes the expedient and the quest for the expedient is of immense importance. Let us also not forget another great work of political thought, political philosophy: Hobbes's first work, *Elements of Law*; the full title is *Elements of Law Natural and Politic*, but still, law.

Now what is the peculiarity of Montesquieu's great work in comparison to that?[14] I try now to render rather the accepted opinion than my own. This book presents itself to a considerable extent surely as an explanation of all positive laws of which he knew—that is to say, it is not a book of a lawyer who interprets the law of his country. [It is] an explanation of all positive laws in terms of extra-legal phenomena. The lawyer does not go beyond the law, at least not necessarily.

In a way Montesquieu's work was prepared—but that is a very long and complicated question—by Vico's *New Science*, the final edition of which appeared in 1744, and this book is of 1748; and there is no clear sign of any use by Montesquieu of Vico, but there is something parallel in what they are undertaking. And so one can say the explanation of all positive laws in terms of extra-legal phenomena, this is a radical innovation of Montesquieu, because no one could apply this formula to Vico without doing gross injustice to his work. And that is what people mean when they say, as they frequently do, that Montesquieu brings about or prepares the transition from the primacy of political science to the primacy of sociology.

I should mention at least the titles of Montesquieu's two other great books, although not comparable in any way to his *magnum opus*.[15] [T]hese are the *Persian Letters*, which he wrote when he was rather young, letters allegedly written by some Turks traveling in Europe and being quite amazed about this insanity of these institutions. That is a very subtle and well-written book, and we will have to use it from time to time, especially in the latter part of the *Spirit of Laws* for the understanding of this work. And the other great work of his is called *Considerations on the Causes of the Greatness of the Romans and of their Decadence*—an explanation in causal terms, in the terms of efficient causes of the greatness and the decadence of the Romans. Let me leave it at these very general remarks.

There is one point, however, which I must stress already at this point: the book appeared, Montesquieu's book appeared in 1748. Montesquieu was a distinguished Frenchman, distinguished not only by mind, but also by his position in society. He was a high magistrate, and he was a baron. And yet, he did not publish this book in his own country; he published it in Geneva, and even in Geneva without his name on the title page. Now[16] what's the difference between France and Geneva in the most general terms, as far as this concerns?

Student: Catholic and Protestant, Calvinism—

LS: Yes, Protestant and—good. Montesquieu's wife was a Protestant, at least of origin. But this,[17] of course,[18] cannot be held against him in any manner [laughter]. That was the first point. The second point was that a great outcry occurred when the book appeared. He was severely attacked. I mean, there were many men who admired him greatly, but there was also [a] great attack by both Catholic camps—the Jesuits and the Jansenists. The book,[19] a few years after its appearance,[20] was put on the index. So today Montesquieu appears, especially if he is compared with the so-called philosophers of the French, as a conservative. But he was—I think one can fairly say that of Montesquieu, we shall find proof of it—of course[21] a great innovator at the same time.

And innovation was not in the earlier centuries what it is today: today innovation is regarded as something praiseworthy, I mean, you always want to hear something new; in former times innovation in matters of importance was regarded as something very grave. Montesquieu agrees with that, but he still felt apparently that some innovations are called for. And therefore that had the consequence that he wrote in a manner which we do not know anymore. Happily, we can say whatever we want; this is a free country. And that is true of course not only of the United States but also of Britain, and western Germany and France, and so on.

Now, I read to you a remark which was made by one of the *philosophes*, d'Alembert, the famous physicist, mathematician, but this was an official statement as a member of French Academy; after Montesquieu's death he gave the *éloge*, the eulogy, of Montesquieu. And in that eulogy he says, among other things, "we say of the obscurity which one may permit oneself in a work of this kind, the same as of the defect of order." In other words, Montesquieu is guilty of obscurity, and he is guilty of defect of order.

"What would be obscure for vulgar readers, is not obscure for those whom the author has had in mind. Besides, intentional obscurity is not in fact obscurity. Monsieur de Montesquieu had to present sometimes important verities, the absolute and direct annunciation of which would have been able to hurt without fruit"—in other words, hurt without doing any good—"he has therefore had the prudence to envelop these truths. And by this innocent artifice he has concealed them to those to whom they would be damaging without being lost on the wise."[iii] So Montesquieu conceals his thought, he presents his thought in an apparently disorderly way because this doctrine is not, according to Montesquieu, fit for general consumption. Only people whom d'Alembert calls the wise, say the reflecting and thoughtful part of the community, can appreciate them and is not harmed by them.

Now this defect of order is frequently mentioned in the literature, and one can make a nice study by comparing what Sabine says—you know Sabine?[iv]—in his chapter on Montesquieu, if you compare that, say, with the great French editor of Montesquieu in 1875, Laboulaye,[v] who still—and that with d'Alembert, and then one sees that something which d'Alembert still understood and of which Laboulaye has still an inkling, is completely lost in Sabine.[22] Sabine, especially when he is confronted with the first chapter of the first book—the fundamental chapter, in a way, the general definition of law—simply arrives at the conclusion that Montesquieu can't have given much thought to what a law is, because it is so utterly confused. Now the chapter is very difficult, but we should keep in the mind the fact that we cannot read Montesquieu as we *should* read Lord Bertrand Russell, among others.

Now, after this general introduction, we turn to the book. And do you have [it] in the English? By the way[23] the English translation is a disgrace, an absolute disgrace. It was made in 1750 or[24] [so] by Thomas Nugent—is that the name?

Student: Yes.

LS: And that is very bad. And a new translation, a literal translation is in preparation by David Lowenthal, and I believe it is almost finished or is finished, and should be out in a year or so. But I cannot always wait until it comes out. Now what is the title, the title in your translation?

Mr. Reinken: *The Spirit of the Laws*.

LS: Yes, this is the final title—of course *Of the Spirit of the Laws*, *De l'Esprit*. Montesquieu was not so presumptuous to say *"The" Spirit of the Laws*. *Of the Spirit of the Laws*. Now the original title of the first two editions is as follows: *Of the Spirit of the Laws, or, Of the Relation Which the Laws Ought to Have With the Constitution of Each*

[iii] Jean le Rond d'Alembert. *Éloge de M. le Président de Montesquieu*, 1755. Published in *Mélanges, II*. Also appeared as the preface to Volume V of the *Encyclopédie*. Apparently Strauss's own translation.

[iv] George Sabine (1886–1960), author of *A History of Political Theory* (1937).

[v] Edward Laboulaye, editor of the Montesquieu edition published 1875–79.

Government—the manners, the climate, the religion, commerce, and so on—*To Which the Author has Added New Researches on the Roman Laws Regarding Successions, On the French Laws, and on the Feudal Laws*.[25] [W]e consider now only the first part—*Of the Spirit of the Laws, or, Of the Relation Which the Laws Ought to Have*. What inference can we draw on that?

Mr. Reinken: This is a book on how to legislate.

LS: Yes, or to use a simple technical term: normative, it's normative. And is sociology as now understood a normative science? No.[26] [G]ood, let us keep [this] in mind. Now let us turn to the next point, that is a motto; the motto is: "*Prolem sine matre creatam,*" an offspring created without, or produced without, the mother—a half verse from Ovid. That is an enigmatic quotation. A view which is quite common is that this offspring which Montesquieu means here is political liberty, which was caused, brought to light, without a mother, meaning, not in a country which enjoyed political freedom. Now if this interpretation is correct, we see again that this is a normative book, that he wants to teach political freedom, something which is a rare, at that time at least, a very rare good, and therefore not merely a factual description.

Now I follow the edition which I have and which is, I think, the best edition now available of the original in the—how is this collection called?

Student: Association Guillaume Budé.

LS: Yes, *Les Textes Français*, it belongs to the Budé, and the editor is Jean Brèthe de la Gressaye, Professor of law in Bordeaux. Montesquieu comes from Bordeaux—has a dual relation, law and the city. Now the next point in this edition, then, is the advertisement of the author. Is this also in your edition?

Mr. Reinken: "For the better understanding—"

LS: All right.

Mr. Reinken: "—of the first four books of this work, it is to be observed that what I distinguish by the name of virtue in a republic is the love of one's country, that is, the love of equality. It is not a moral, nor a Christian, but a political virtue, and it is the spring which sets the republican government in motion, as honor is the spring which gives motion to monarchy. Hence it is that I have distinguished the love of one's country and of equality by the appellation of political virtue."[vi]

LS: Yes, but that badly translated—"I have there therefore called political virtue the love of one's country and of equality. I have had novel ideas; it was therefore necessary to find new words, or to give to old words new meanings. Those who have not understood that have made me say absurd things, and things which would be shocking in all

[vi] Charles de Montesquieu, *The Spirit of Laws*, translated by Thomas Nugent, vol. I, (New York: Colonial Press, 1900), Author's Explanatory Notes, xxxv.

countries of the world; for in all countries of the world one wishes morality." In other words, the people who thought that [when] Montesquieu speaks of virtue he means moral virtue, and then Montesquieu comes and says moral virtue is the spring of republican governments only, not of monarchies. All sincere lovers of monarchy were of course shocked. And because, as Montesquieu says, every country wants to be decent, and Montesquieu explains this here and says I didn't speak of decency in general, I spoke of a particular kind of virtue, political virtue. Well we don't [need] to read the rest now, you should read it at home.

There is one more point which I must mention; he says, "for the understanding of the first four books of this work"—that means of course also of the first book. The subject of virtue comes up only later, in Book III, but it is already in a way the theme from the very beginning, as we will see. I will not go into the question whether the people who understood Montesquieu in the way disapproved by Montesquieu were so wrong, because there is a great ambiguity there, and an ambiguity which I believe was intentional on the part of Montesquieu[27]—let us not prejudge the issue. One point I would like to make only in this connection: the term "political virtue," does this ring a bell?

Mr. Bruell: In Plato, "vulgar virtue"[28] [is] also called "political virtue."

LS: Yes. In other words, Plato distinguishes between genuine virtue and political virtue, a lower kind which he also calls vulgar, in Greek *dēmotēs*. Yes that is quite true, and Montesquieu must have been aware of that, although he never refers to this. And this distinction was taken over by the neo-Platonists and also by the Christian tradition to some extent. Montesquieu surely knew it. But at any rate what he says here is—and that he makes also clear in his "*Avertissement au Lecteur*,"—how is that translated?

Mr. Reinken: "Explanatory Note."

LS: Yes, namely, that this [is] a book on politics, not on any broader subject, and therefore[29] the term virtue must be understood in this limited sense. Good. Now then we come to the Preface. The Preface is not very long,[30] perhaps we['ll] read a bit, the first three paragraphs.

Mr. Reinken: "If amidst the infinite number of subjects contained in this book there is anything which, contrary to my expectation, may possibly offend, I can at least assure the public that it was not inserted with an ill intention."

LS: In other words, he tries to convey the impressions that he can't imagine that anything could possibly offend, but people are perverse, some people might be offended. But one thing is clear: if they do shock, he did not intend to shock, he did not have a bad intention. Good. Yes?

Mr. Reinken: "For I am not naturally of a captious temper. Plato thanked the gods that he was born in the same age with Socrates: and for my part I give thanks to the Supreme

that I was born a subject of that government under which I live; and that it is His pleasure I should obey those whom He has made me love."

LS: So in other words, that is, there may be offense, but Montesquieu is a perfectly correct and decent man. Yes?

Mr. Reinken: "I beg one favor of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours' reading of the labor of twenty years."

LS: By the way, that is literally true; he worked so many, many years, that is no exaggeration. Yes?

Mr. Reinken: "—that they will approve or condemn the book entire, and not a few particular phrases. If they would search into the design of the author, they can do it in no other way so completely as by searching into the design of the work."

LS: Yes, this is of course a very rich sentence: "the design of the author" and "the design of the work." The design means also the order, the arrangement of the work; and this is by no means clear,[31] this design, as we will see later. Yes?

Mr. Reinken: "I have first of all considered mankind—"[vii]

LS: No, well let us be a little—"I have first examined men, and have believed that in this infinite diversities of laws and manners men were not exclusively led by their fancies," by their whims. Here we get the first inkling of what he wants. He has studied men, and this study of men has led him to see that the laws and manners which are so infinitely diversified and so capricious and whimsical, are not merely whimsical. In other words they can be understood if one has examined men. What is the link between examining men and the discovery of the absence of universal caprice from the human arrangements?

Student: The fact that there was some laws that were the same everywhere.

LS: But still,[32] the others would still be whimsical, could be whimsical.

Mr. Reinken: Our human nature?

LS: Yes.[33] He speaks of that later in the third paragraph from the end.

Mr. Reinken: "I have not drawn my principles from my prejudices—"

LS: No, no, no—from the end.

Mr. Reinken: "It is in endeavoring to instruct mankind that we are best able to practice that general virtue which comprehends the love of all. Man, that flexible being,

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[vii] *Spirit of Laws*, vol. I, Montesquieu's Preface, xxxi.

conforming in society to the thoughts and impressions of others, is equally capable of knowing his own nature, whenever it is laid open to his view—"

LS: No, "when one shows it to him."

Mr. Reinken: "—when one shows it to him; and of losing the very sense of it, when this idea is banished from his mind."[viii]

LS: So in other words the link is human nature—by examining and studying men, understanding the nature of men, and then descending from that, we can understand all laws, however seemingly absurd. This is what he plans to do. And now let us go on where we left off.

Mr. Reinken: "I have laid down the first principles—"

LS: He simply says "the principles."

Mr. Reinken: "—the principles, and have found that the particular cases follow naturally from them; that the histories of all nations are only consequences of them; and that every particular law is connected with another law, or depends on some other of a more general extent."

LS: Yes, now, if we had not read this paragraph about human nature we would not understand this at all. He has examined men—that's one thing. Then he has posed principles—how did he get these principles? That's not made clear, but when [he] had traced his observations regarding men to the constant nature of men then he could—these are the principles. And once he saw[34]—these principles he could understand the histories, not only the laws of all nations. Yes?

Mr. Reinken: "When I have been obliged to look back into antiquity—"

LS: Yes, but, that's "When I have been called back to antiquity."

Mr. Reinken: "When I have called back to antiquity, I have endeavored to assume the spirit of the ancients, lest I should consider those things as alike which are really different; and lest I should miss the difference of those which appear to be alike."[ix]

LS: What does this have to do with his general purpose of understanding the principles, i.e. human nature, and on the basis of that to understand the laws of all nations? Why does he suddenly bring in the ancients? Now if you[35] look again at the paragraph before the last read, he has observed that the histories of *all* nations are nothing but the consequences of these principles. That is very emphatically said.[36] [W]e know what "all nations" means, but what is the point of the reference to all nations in a writer in the eighteenth century—or for that matter in the seventeenth or sixteenth or fifteenth?

[viii] *Spirit of Laws*, vol. I, Montesquieu's Preface, xxxiii.
[ix] *Spirit of Laws*, vol. I, Montesquieu's Preface, xxxi.

Student: Wouldn't it refer to the Jews?

LS: Of course. No, the Jews surely, that[37] would be the interesting case. So in other words the Jewish history—he speaks of the histories, and by the way also of the Christians, but primarily of the Jews here—are as intelligible from his principles as the histories of the Greeks, Romans, or what have you. And now that is a reason why he refers now to antiquity. The key point is [that] it is of very great importance to understand, to grasp the spirit of antiquity because we are, we moderns are inclined to think that the ancients were exactly like us; whereas there is a fundamental difference, and this fundamental difference has to do with the difference between revealed religion and the absence of revealed religion in classical antiquity. Yes?

Student: Why did you single out the Jews just now?

LS: Pardon?

Student: Why did you single out the Jews just now?

LS: Because it, no, well if he says . . . for example, if he would say[38] a Christian [nation], say Spaniards, then it is clear that the history of the Spanish people is only partly determined by their religion, yes? But in the case of the Jews the whole history as it was understood—the history of the people of God, as favored or punished by God. So[39] the difference between the ancients and moderns is here alluded to already at the beginning and you will find very soon at least from Book III on how important that difference is for the whole work. Skip three paragraphs and then go on.

Mr. Reinken: "I write not to censure anything established in any country whatsoever. Every nation will here find the reasons on which its maxims are founded; and this will be the natural inference, that to propose alterations belongs only to those who are so happy as to be born—"

LS: No, "so happily born."

Mr. Reinken: "—so happily born as to have a genius capable of penetrating the entire constitution of the state."

LS: Yes. Here remember what he said before that he has not a captious spirit; he has not written in the intention of criticizing anything established anywhere. On the contrary, every nation will learn from his book the reasons why, say, polygamy is a sound institution[40] [in] India, or whatever it may be. And yes, that's fine, but now he makes a very strange remark: and if all nations have such good laws, the best laws for them, then political science becomes strictly theoretical. It describes their beauty; nothing, it cannot propose any changes. But[41] [then] in the second half of this paragraph he draws a somewhat different conclusion,[42] a paradoxical conclusion, namely, that to change anything there, or to propose changes,[43] [the ability] belongs only to a certain kind of

people. To which kind of people?[44] First to those who are happily born, meaning of sufficiently high rank. There is a passage to this effect in Descartes' *Meditations*[45] that only those who are so happily born—I do not know whether he uses the same word—can make proposals of change, of political changes. But Montesquieu does not go so far. He knows that there can be kings and ministers who are not the best men to propose wise changes, and therefore he says it belongs only to those who are sufficiently happily born, not by virtue of their descendants but in order to penetrate with one stroke of genius the whole constitution of the state. Yes. Now go on.

Mr. Reinken: "It is not a matter of indifference that the minds of the people be enlightened."

LS: Why does he [the translator] not say that the people is enlightened, as Montesquieu says? [laughter] What can be enlightened—can the liver be enlightened? [laughter]. Yes, I mean you see the difference between someone who knows language and another who doesn't. Yes. No other part of the human being can be enlightened [laughter]. Well if he learns a minor lesson regarding [laughter] composition in passing, it doesn't do any harm. Good. "It is not indifferent that the people be enlightened." Yes.

Mr. Reinken: "The prejudices of magistrates have arisen from national prejudice."

LS: "—have originally been the prejudice of the nation." Yes?

Mr. Reinken: "In a time of ignorance they have committed even the greatest evils without—"

LS: No, no. I will try to translate it: "In a time of ignorance one has no doubt whatsoever, even if one makes—inflicts the greatest evils, in a time of light—of enlightenment—one trembles even when one produces the greatest goods because one knows how difficult it is to have good unmixed with evil. One senses the ancient abuses, one sees how they can be corrected, but one sees also the abuses to which the very correction is liable. One leaves the evil—one lets the evil be if one fears a worse; one lets a good alone if one is doubtful regarding the better. One considers the parts only for judging of the whole altogether. One examines all causes in order to see the results." Now what is the implication here? Do you see there was a kind of suggestion that all laws are good, that all laws are good; and now we see it is necessary, that changes are necessary. And it is even necessary that the people become *enlightened*, enlightened also about the defects of their laws. Go on.

Mr. Reinken: "Could I but succeed so as to afford new reasons to every man to love his prince, his country—"

LS: "His duties" first: "to love his duties, his prince—"

Mr. Reinken: "—his country, his laws."

LS: Yes.

Mr. Reinken: "New reasons to render him more sensible in every nation and government of the blessings he enjoys, I should think myself the most happy of mortals."

LS: Is he not a charming man? He wants to make everybody happy in the possession of what he has. If I could bring it about that everyone had new reasons for loving, for example, his prince or his laws, I would regard myself as the happiest of mortals. Now does Montesquieu—what is the character of this conditional sentence? Is this a condition which is fulfilled or can be fulfilled, or is it utterly unreal—an unreal conditions clause, as it's called in Latin grammar? Well I'm sure it is unreal: if I—I would love, it would be wonderful, if all men would be satisfied with the regime under which they live. But how can you, how is this possible? The implication is, this study,[46] this empirical study, scientific study of the causes of laws entails necessarily proposals for the change of laws, for very judicious change, cautious change, but nevertheless for change. Very simply stated, it would be wonderful if all laws everywhere were good, but very unfortunately there are bad laws in the world from time to time and from place to place. Now if it were feasible,[47] what is just would be identical with the legal everywhere, whatever the laws may be; but is this the case, is this possible? Now let me see. Let us read the next paragraph.

Mr. Reinken: "Could I but succeed so as to persuade those who command, to increase their knowledge in what they ought to prescribe; and those who obey, to find a new pleasure resulting from obedience—I should think myself the most happy of mortals."

LS: You see the same phrase, the same apodosis: "I would believe myself the most happy of mortals." Yes. And you see also from this paragraph that he—what does he want to do—if he could do that those who command increase their knowledge about what they *ought* to prescribe. Montesquieu does not merely try to explain how come that they prescribe this and this; he wants to improve things. In other words he is a teacher of legislators, as all the great philosophers, political philosophers of the past were, there is no doubt about that. In a way also a teacher of the people, as we have seen, because a certain enlightenment of the people is necessary so that the governors can act in an enlightened manner. And now the next paragraph.

Mr. Reinken: "The most happy of mortals should I think myself could I contribute to make mankind recover from their prejudices. By prejudices I here mean, not that which renders men ignorant of some particular things, but whatever renders them ignorant of themselves."[x]

LS: Yes. So in other words let us link it up with the general notion: Montesquieu tries to explain all laws of all nations to reduce them to their[48] sentiment in the light of their causes—and the climate is such a cause, commerce is such a cause, and so on. But there is also a third cause, a new kind of cause. Let me begin that sentence. The general thesis

[x] *Spirit of Laws*, vol. I, Montesquieu's Preface, xxxii–xxxiii.

of Montesquieu can be stated as this: laws must be proper to the people for which they are framed, and therefore there is an infinite variety of good or best laws: the best for . . . best for Frenchmen; best for Eskimos, and so on. That's clear, that is what he has in mind.

But it is therefore possible to have as many best laws as there are peoples or ages, it appears. But will in fact[49] all laws be fit for that people or that age? Do not all laws—I mean you have climate, or you have the way in which [people] are living, hunting or whatever it may be. Now this hunting, or whatever the climate is, produces this particular kind of law. Yes, but does it not have to go, does the hunting not have to go through the mind of the legislator to become the law regarding hunting? And may the legislator not be stupid, or, to use a more general term, a more relevant term, filled with prejudices, errors, and ignorance? So errors and ignorance are a very important part of the causes of laws[50]. [T]herefore they have to be considered from a strictly causal point of view, and they have to be considered even more from the point of view of mankind, to improve these laws.

These causes—climate cannot be changed, according to Montesquieu—but these causes which reside in the minds of the legislators can be changed by enlightenment, and that is what Montesquieu sets out to do in this work. So it is definitely a normative book. How does this go together, if we try to state this very generally, how does it go together that this is a normative book and at the same time,[51] strictly, a book thinking in terms of causal explanation in the now usual sense of the word? Now Montesquieu is concerned with good laws, i.e. with the best laws possible in the circumstances. Therefore he engages in a causal study of all laws, namely in a study of the conditions of all laws, the conditions of all laws; and if he knows the conditions of all laws of various kinds, he knows also the conditions of the best laws possible, I mean of the best laws possible[52]—which you cannot have, say, in Greenland, but which you can have in France perhaps. So we can say instead of starting from the end pursued, to be pursued—say, the highest development of man, or whatever it may be—he starts from conditions rather, the conditions of all kinds of laws which, if he has a universal knowledge of that, he has of course also knowledge of the conditions of the best laws. I think these are the main points. Someone raised—did you raise your hand?

Mr. Bruell: He gets the knowledge of the best laws though I suppose by a different means than that which he uses to get knowledge of the conditions of the laws.

LS: Yes that we do not yet know.[53] The only point which we have to make clear and which appears with perfect clarity is that this work on political philosophy is a normative book, as all the great works were, but differing somehow from the other normative works written prior to him—not only Plato and Aristotle but also Hobbes and Locke, let us say, and we must find, gradually find what this peculiar difference is. Yes?

Student: How would you interpret the first paragraph of the three conditional sentences, where he said if I could do [that] all the world had new reasons for loving its duties, its

prince, its country, and its laws—isn't this almost an argument for being content with that which is, the status quo?

LS: Yes, well, if someone says: what I do is an uphill fight, almost hopeless, is this a reason for giving up? If the thing, the fight in which he engages is intrinsically worth it—I mean, that he will find legislators who will listen to him is very doubtful, but it is possible. Maybe somewhere[54] some prince or magistrate or sovereign people who listens to him—that can happen. I mean there is no guarantee of success, there is no—he doesn't count on any wave of the future or whatever it may be, which favors.

Same Student: No, no. What I meant by my question is, he doesn't say, I want to give new laws so that people may be happy with these new things; he wants to give new reasons for being happy with what they have.

LS: Oh no. He wants to—well, he doesn't explicitly say it, but, in this paragraph: if I could bring it about that those who command increase their knowledge about what they ought to prescribe, namely, he will not tell, say, the king of France, what he should do; but if he could, or his ministers could understand that, they would see that the policy in which they engage is wrong.

Same Student: I'm talking about the paragraph above that. That's the one I mean.

LS: No, this is—yes, well, no this is clearly an entirely[55] unreal conditional. That's impossible. That would be wonderful if all nations of the world living under the most different laws in every respect, yet each would be happy. Will you excuse me for a moment? I will be back shortly. [Brief pause, tape resumes with Strauss mid-sentence]—no, to indicate what he has indicated in other ways, that it is terribly sad but he may have to find faults with some laws here and there. To give you another ironical expression of the same difficulty, his countryman Descartes in his *Discourse on Method* says, [and] I vulgarize him for the purpose: I have always been a good boy, I always wanted to repeat exactly what my teachers told me, but then unfortunately my teachers disagreed. What could I do? I had to take the trouble of thinking for myself. Something of this—so if it is a very nice thing to find no fault with anything on earth. There is a good-natured—how is this called, the three—don't see evil, don't hear evil, don't speak evil. That's a wonderful thing, but unfortunately it is not feasible in the long run. I mean, you can do it at a cocktail party, or on other occasions, but not throughout. Try it. From no point of view is this possible.[56] So in other words what we see in the Preface of Montesquieu's non-normative intentions—that has nothing to do with sociology but only with a kind of touching philanthropy in the old sense of the word: love of human beings, not to hurt any feelings, and so on. Not more. We will soon come—but, interestingly enough, not in the Preface, but at the end of the first chapter, or rather the end of the first book—into the question of sociology. Good.

Now let us, at least so that we do not have too much to discuss next time, let us at least begin with the beginning of the first Book. Now for the understanding of the first book we must keep in mind what we have heard from Montesquieu's own mouth, that the first

book, as well as the three following books, deals with virtue. It's political virtue of course. Now let us begin. The first book deals with laws in general, as a proper work on laws would. And the first chapter is the most general chapter of this general book: "On Laws in the Relation Which They Have With Different Beings."

Now, the first, the very first sentence: "The laws, in the most general significance of the word, are the necessary relations which derive from the nature of things, and in this sense all beings have their laws: divinity has its laws, the material world has its laws, the intelligences superior to man have their laws, the brutes have their laws, man has his laws."[xi] Let us consider the general definition, which is indeed quite dark, of laws, and which applies to every being—not only to what we ordinarily call laws: laws are necessary relations which derive from the nature of things. Surely[57] an arbitrary enactment is of course not [a] law.

Now in order to help you a bit to find your bearings, I do something which I have done many times: contrast two definitions of law in its most extensive significance. The first I take from Richard Hooker, *Of the Laws of Ecclesiastical Polity*, near the beginning of the First book—in the Everyman's Library edition which I have, on page 150: "All things that are have some operation not violent or casual. Neither does anything ever begin to exercise the same, without some fore-conceived end for which it works." *No being*. "And the end which it works for is not obtained unless the work be also fit to obtain it by. For unto every end every operation will not serve. That which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure, of working, the same we term a Law." Now what is here a law? A law determines the form and measure of working conducive to an *end*. What would be a simple example? We want—[58]let society, living in society be an end, if everyone could hurt, kill, and so on, everybody else at any time, society would be impossible; therefore the law, the rule. "One should not murder," is a law. The law determines an action with a view to an end. And this is true, according to Hooker, of all beings. Therefore there is also a divine law, a law which God himself obeys, if one can speak of that; even inanimate things also have laws. This is one definition.

Now, you see[59] [this] is not Montesquieu's view. There is no reference to ends, obviously. He speaks only of "necessary relations which derive from the nature of things." I give you another definition which[60] was made after the big watershed, and you will see what I mean by that soon. Spinoza, *Theological-Political Treatise*, chapter 4, beginning: "The term law taken absolutely, means that according to which every individual or all or some of the same species act in one and the same certain and determined manner. And this depends either from the necessity of nature or from the arbitrary will of men. The law which depends from the necessity of nature is that which follows necessarily from the very nature or definition of that thing; and the other of course depends on human arrangements." And therefore he gives as—for example that all bodies, when they impinge on smaller ones, lose so much from their motion as they communicate with the others, is a universal law of all bodies, which follows from the necessity of nature. And so also that man, when he remembers one thing, remembers at

[xi] *Spirit of Laws*, vol. I, bk. I, ch. 1, Strauss's own translation.

once something similar which he had perceived simultaneously with the one, is a law which follows necessarily from human nature.[61] [T]his was published [in] 1670; Hooker's book was published at the end of the sixteenth century, I don't know the exact year.[xii] What happened in the meantime?

Student: . . . .

LS: Pardon?

Same Student: Ends were forgotten.

LS: The new natural science. Galileo, if you want to use a single name. And that is indeed behind it. Now what does Montesquieu do regarding law? To whom is he closer, to Hooker or to Spinoza?

Student: . . . .

LS: You must speak up.

Student: To Spinoza.

LS: Spinoza. Yes. But Montesquieu does not say exactly the same thing that Spinoza says. Montesquieu does not say laws are the necessary consequences from the nature of things. He says they are the necessary relations which derive from the nature of things. And so why does he make that change? Why does he make that change? That's the first question. In other words, let us take an example which will come up later when we discuss the first chapter. The relation of the radius and the periphery of a circle—this follows from the nature or definition of the circle, necessarily. But why relations? Why should we speak of relations? I mean, Spinoza doesn't speak of relations. Why should we speak of relations? That's the question. And you see "relations" is a key word throughout the chapter. Yes?

Student: Does this tie up later with the fact that he tries to associate it with climate and temperature?

LS: Yes, these are relations also. Yes. But we are here not yet at the human. We have not yet arrived at the human laws, or laws obtaining for men alone. Law in its most extended meaning, or, as Spinoza calls it, law taken absolutely, *absolute sumptum*.[62] [I]f he had said they are, that the laws are in the strict sense derived from the nature of the things he would only have repeated Spinoza. But he doesn't do that. And why does he not do that? Yes?

Student: . . . .

[xii] Hooker's *Of the Laws of Ecclesiastical Polity* was published in 1594 (first four books), 1597 (fifth book) and the rest posthumously (sixth through eighth books).

LS: Yes but apply it to the simple case of the circle—where do the relations come in?

Mr. Reinken: I may be floundering, but "relations" suggests to me that quite disparate things, having no clear substantial connections are—

LS: That's not necessarily true, there is a correlation between the radius and the circumference expressed by a beautiful formula.

Mr. Reinken: Yes.

LS: Yes.

Mr. Reinken: But you can't have a circle without—you can't have the one without the other.

LS: Ya, sure. But there is a necessary relation. I mean, if you say a circle is a figure each point of which is equidistant from the center, that's the definition. Then there is a strict relation, then—no, first of all from this it follows, strictly, $2r\pi$; and that is clear, that is what Spinoza means. But what does[63] [Montesquieu] mean?

Student: I was thinking—I don't know exactly what Montesquieu's relation to Hume would be, but I was thinking that the reason why he might have made such a switch is that the consequence —for something to be a consequence of something else it would have to be, generally would be caused by something else, and this would only be one particular sort of the relation that you could have. And it would be a relation of—it would be a relation that would be somewhat according to a certain mode of thought of this particular problem, one that is rather arbitrary, assigned to objects by the human mind because of certain things that were noticed, and this would be one sort of relation, another relations might be resemblances and so forth. And Montesquieu may be first of all dodging the issue of—not dodging but not saying that specifically a cause is an inherent . . . of objects, or, two, making a more general statement about the relations of all sorts of, that law may deal with all sorts of relations beside specifically causes.

LS: Well, that —Yes. But we don't know. We have to read the sequel of the—I will only say one thing. Let me—the second paragraph. Will you read it?

Mr. Reinken: "They who assert that a blind fatality produced the various effects—"

LS: "*All* the effects"—Oh God! This miserable man!

Mr. Reinken: "—all the effects we behold in this world talk very absurdly; for can anything be more unreasonable than to pretend that a blind fatality could be productive of intelligent beings?"[xiii]

LS: Yes. Now who said this absurdity?

[xiii] *Spirit of Laws*, vol. I, bk. I, ch. 1, 1.

Student: . . . .

LS: Yes, but names, names.

Mr. Reinken: Democritus?

LS: Yes, but there are some reasons. I would have to look up the notes of . . . a note also from[64] another writing of Montesquieu. The man who was most famous for this view. This editor says, "Montesquieu has here in mind the Dutch philosopher Spinoza, the author of the *Theological-Political Treatise*." And he proves it by a reference to a writing of Montesquieu, the defense of *The Spirit of the Laws* which Montesquieu wrote against the critics of the work. And he doesn't give any further quotation. So there is no doubt, *the* man of the blind fatality was Spinoza—whatever the pre-history might have been. Of course he could also have said Hobbes, but it is not so clear and so brutally stated, so clearly and so brutally stated in Hobbes as it is in Spinoza.

So we see—we leave it at this point. He begins with the definition of law which looks more like Spinoza's definition than that of Hooker, and Spinoza and Hooker I do not mean here as individuals but representatives of the modern view versus representatives of the traditional view. Hooker in the fundamental points follows Thomas Aquinas.[65] [S]o he has a certain inclination towards the Spinozistic view, but Spinoza is of course entirely unacceptable, and therefore he changes, Montesquieu changes the Spinozist definition of law. And what follows from that we must see later. In other words, does Montesquieu return to the orthodox, theistic, or maybe even deistic view of the eighteenth century or not? That we must see. And I do not expect you, Mr. Bruell, to answer this question because it requires quite a few things. Good. So, do you want to say something? So we meet, then, I hope, next Thursday.

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[1] Deleted "L-y-c-i-a-n."

[2] Deleted "And."

[3] Deleted "with"

[4] Deleted "within"

[5] Deleted "only in the nineteenth century."

[6] Deleted "it's earlier."

[7] Deleted "and."

[8] Deleted "therefore."

[9] Deleted "Now Cicero means here."

[10] Deleted "and."

[11] Deleted "This we can say is."

[12] Deleted "means, of course."

[13] Deleted “And.”

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[15] Deleted “and.”

[16] Deleted “what’s by the way.”

[17] Deleted “is.”

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[21] Deleted “But he was.”

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[24] Deleted “though.”

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[27] Deleted “but that we will….”

[28] Deleted “it’s.”

[29] Deleted “it must be.”

[30] Deleted “but we cannot….”

[31] Deleted “is.”

[32] Deleted “there could….”

[33] Deleted “We turn perhaps….”

[34] Deleted “… once he had.”

[35] Deleted “look more….”

[36] Deleted “Now what does all … I mean.”

[37] Deleted “it.”

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[48] Deleted “in the.”

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[50] Deleted “and.”

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[52] Deleted “what….”

[53] Deleted “I mean we … after all there is.”

[54] Deleted “there is.”

[55] Deleted “an.”

[56] Deleted “And if….”

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[58] Deleted “society.”

[59] Deleted “what … that.”

[60] Deleted “is after, which.”

[61] Deleted “So this … now.”

[62] Deleted “Why does he … I mean.”

[63] Deleted “he.”

[64] Deleted “a writing of.”

[65] Deleted “And here … and.”

Session 2: Oct. 7, 1965

LS: [1]Now we have to turn[2] immediately to Book I. But I have to remind you what we discussed last time, the main point. There is a view, quite common, and not entirely unfounded, that Montesquieu prepared sociology, or is in a way a sociologist. Now we have seen that the first impression that we get when we read the Preface is that Montesquieu's political science—however you call it—is normative; in that sense not different from what all political science was before. But Montesquieu is concerned with the causes of all laws. Now how do these things go together—the normative character and the concern with the causes of all laws? Montesquieu holds that laws *should* differ in different places and times according to the differences of climate, commerce, religion, and so on. He is concerned with *good* laws, but there are not *the* good laws. Laws good for Greenland are not good for Southern Italy, and so on. This is a formula[3] which we can accept. But can one leave it at that? Can one leave it at that… presents here the best laws for every society of the present or past? And that's all which he is doing? What's the difficulty?

Mr. Bruell: [4]That these standards by which one says, "These laws are best for this society," would also seem to indicate which laws are best simply.

LS: [For example where] he tells you this is good for this climate. Let us take this, or for a seafaring nation—what else do you need?

Mr. Bruell: Because the goodness is in terms of something—I mean, it's either in terms of freedom, or it's more stable, and those kinds of standards, freedom and stability.

LS: All right.

Mr. Reinken: But I feel that which points to the goodness of Greenland's laws, and Naples' would enable you to ask, "Would I rather live in Greenland or Naples?"

LS: That is one point. Yes, a very important one.

Student: Plus a lot of the things he talks about—he says for a commercial state one should have a certain type of laws; but again, the decision whether it's going to be a commercial state or not[5] could be changed by the legislator.

LS: Yes, but the most simple thing would be to say this: What are good laws in all cases? Laws which are good for the happiness of the people. And therefore there is a common element where, in happiness, one could say. But to come—to remain slightly closer to what we know from his own mouth, we have read the motto, and the motto seems to indicate that what he is concerned with is political freedom. And now obviously not all laws are conducive to freedom, and not even all *good* laws are conducive to freedom. If it is a country which is wholly unfit for freedom then the good laws must be bad for freedom. More simply stated, one must raise the question of the levels of the various

good laws. You have good laws [Strauss goes to the blackboard] . . . but in fact there are many levels. For example, what are the best laws [for England]?

Mr. Reinken: . . . Heidegger.

LS: Yes, Heidegger only . . . .that may be the best laws for an Eskimo tribe may be—I mean, is it as good to be an Eskimo as it is to be an Englishman? I'm speaking from the point of view of Montesquieu. So in brief, one needs an absolute standard beyond this relative standard, what is good for this particular man. And the question is, what is that absolute standard for Montesquieu, and how does he arrive at it, how does he establish it? This much we should keep in mind for the whole course and we will get a somewhat clearer notion when we come to the chapter on natural law. Natural law is by definition a law meant to be of universal validity.

Now we began to study the first chapter, and there we saw his general definition of laws: laws are necessary relations which derive from the nature of things. Now that is a very strange definition. What is Montesquieu driving at? Now when you return to the end of that chapter we see he speaks there of the necessary relations of laws to the climate, *et cetera*. More precisely, he speaks of the necessary relations of *good* laws to climate, *et cetera*. But this implies quite a few actual laws are good, but still the primary consideration is the necessary relation to good laws. But necessary relations *of* laws is something entirely different than to say that laws themselves are necessary relations. Yes? You can't say a law is a necessary relation; I mean, by quibbling you can defend it, but it doesn't make sense to begin with. Now these laws which he is seeking, the laws, I mean, what he is concerned with, the necessary relation of laws, of good laws, to climate, and so on, are then laws *governing* the laws; and these laws governing the laws are necessary relations—meaning, the laws governing the laws are necessary relations, i.e. the relations between laws and climate, religion, commerce, and so on.

It is a very simple thought, but I may not have expressed it simply enough. Shall I try again? We have laws in the ordinary sense, and these laws may be good laws. And whether good or not good, however, they have necessary relations to something—to climate, *et cetera*. Now that with which Montesquieu is concerned are not so much the laws as laws, as the necessary relations which the laws have to climate, *et cetera*. And these necessary relations *governing* the laws, these are laws in a higher sense, say the sociological laws regarding laws, regarding ordinary laws. Good. Since laws governing laws—this ambiguity exists, the explanation—we need a better explanation of his general definition.

Now I pointed out last time that there is a connection between Montesquieu's general definition and the definitions as given by Spinoza in the *Theological-Political Treatise*, chapter four, beginning. And I mentioned the law in the absolute sense, without any qualification, signifies that according to which every individual, or all individuals or some of the same species, act in one and the same certain and determinate manner, and this law depends either on the necessity of nature or on human arbitrary will. Now we are only interested in the law which depends on the necessity of nature. The law which

depends on the necessity of nature is that which follows from the very nature or definition of the thing necessarily. This is Montesquieu's starting point, we can say. Laws are necessary. Laws in the most serious sense are necessary consequences from the nature of a thing—say, the laws regarding brutes are laws which follow necessarily from the nature or definition of the brutes. This is—laws are necessary consequences; Montesquieu changes that—"necessary relations." Why does he change that?

Now in the next paragraph, in the second paragraph, Montesquieu speaks of those who have said that a blind fatality has produced all the effects which we see in the world; "they have said a great absurdity: for what absurdity could be greater than a blind fatality which had produced intelligent beings?" By that he means Spinoza. So why this outburst against Spinoza at this particular point? Now did Spinoza say a "blind necessity" has produced all things? What did Spinoza say, what is the teaching which you find when you open his books? What is *the* cause of everything, according to Spinoza? How does he call it? God! God! Not "blind necessity." Spinoza says the world is a necessary *consequence* of God. And this is unacceptable, and therefore Montesquieu says, or means to say, as we shall see, God. The world is not a necessary consequence of God, but God has necessary *relations* to the world. But, one can say, does God not have necessary—but does God have necessary *relations* to the world even? Is not creation an entirely free act? You see, so that it would be assailable on these grounds.

Now what[6] would one say on this score? God has created the world freely, but he has not created it blindly of course. Before creating it, if one can speak in this manner, he had a vision of what he was going to create. And to develop this a bit, he saw before him an infinite variety of possible worlds, and these possible worlds are of course coeval with God himself. Therefore there are necessary relations between God and the possible worlds. Necessary relations coeval with God himself. And now the question is, How did God select the one world which he did choose? Did he toss coins? I mean, is this an arbitrary selection, or what?

[7]This question was much discussed in Montesquieu's age. There was a philosopher called Leibniz who said God has chosen the best of all possible worlds, because to act differently would have to be unworthy of his perfection, would have been an unwise and bad act. Therefore God was in a way compelled to choose this world, and this world must be, as created by God, must be the best of all possible worlds. This is the background of the first chapter, as we shall see when we go on. So after having shown the absurdity of these crude men—crude, vulgar Spinozists—who say that the blind fatality has produced intelligent beings. Now what follows from—if this is absurd, it follows that the world which includes intelligent beings has been created by some *seeing* being, not blind. Now let us read the third paragraph.

Mr. Reinken: "There is, then, a prime reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another."[i]

[i] *Spirit of Laws*, vol. I bk. I, ch. 1,1.

LS: Yes, so there is a primitive reason—primitive, of course, in the original sense of original reason—which causes everything else. Yes. Now here he speaks of the laws again, but he does not yet say that they are necessary. This is a concession which he makes to theism. He doesn't even speak of God explicitly. There is a primitive, original reason which originates everything, and this primitive reason has relations to the rest of the world, the rest of the created world, and also—but he does not call these relations now necessary; he stops, he makes a certain provisional concession. Yes?

Student: But he says that the laws are the relations between this primitive reason and the various beings, and among the beings themselves. So presumably even without this primitive reason there would still be laws that would relate the various things to each other.

LS: No, the other things would not *be* if they had not been created. Yes. Now let us go on. Now[8] in the next paragraph he speaks again of God.

Mr. Reinken: "God is related to the universe—"

LS: No, "has a relation with the universe."

Mr. Reinken: "—has a relation with the universe, as Creator and Preserver; the laws by which He created all things are those by which He preserves them. He acts according to these rules, because He knows them; He knows them, because He made them; and He made them, because they are in relation of His Wisdom and power."[ii]

LS: Yes. So you see here[9] this is a question of creation, which is here discussed, even explicitly mentioned. God acts not arbitrarily: God acts according to rules, and He acts according to the rules because He knows them. But are these rules as it were Platonic ideas, superior to God? No.[10] God knows them because He has made them. He could have made very different rules. He could have made any rules. But is this true? No. He makes only such rules which have *relations* with His wisdom and His power. So God's creative act is not arbitrary; it can be said to be free, but within these limits indicated. God's creation is not necessary, but God acts necessarily in accordance with his wisdom and power. His omnipotence is limited by his wisdom.

And this[11] goes in the direction of the argument of Leibniz, that He had to choose the best possible world. In Leibniz's great theological work, the *Theodicy*, in paragraph 7, you'll find the following remark: "This relation of an existing substance"—meaning God—"to simple possibilities"—the various worlds, the various systems—"are prior to creation mere possibilities." One of them becomes actual by being chosen, but here Leibniz here also speaks of the relation of God to something else. Now let us go on.

Mr. Reinken: "Since we observe that the world, though formed by the motion of matter, and void of understanding, subsists through so long a succession of ages—"

[ii] *Spirit of Laws*, vol. I, bk. I, ch. 1,1

LS: No: "always." He has a nerve [laughter]. Yes.

Mr. Reinken: "—always, its motions must certainly be directed by invariable laws—"

LS: "Its motions must have invariable laws."

Mr. Reinken: "—and could we imagine another world, it must also have constant rules, or it would inevitably perish."

LS: Yes, or "it would be destroyed." So, now he seems to speak[12] entirely of[13] what one can call the material universe; and he does not speak of a god here. But let us read the next paragraph.

Mr. Reinken: "Thus the creation, which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It would be absurd to say that the Creator might govern the world without those rules, since without them it could not subsist."[iii]

LS: Yes. Let us stop here. The laws of matter are necessary relations between God and nature, which guide God's creation and preservation. Creation is indeed not necessary, but if it takes place it follows certain rules. Now this is a main point which he makes in these two paragraphs. You see, but the key point is this: Granted that creation is a free act, it presupposes as invariable rules as the fatality of the atheists presupposes. The whole understanding of the material universe is not affected by the difference between atheism and theism, as you know today as a matter of course from modern science, but it was not so clear in the eighteenth century. Let us read the next paragraph.

Mr. Reinken: "These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, or lost, according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy."[iv]

LS: Yes.[14] Does he call these relations necessary relations? He does not call them here; these are the laws of motions of course, Newtonian laws which he has in mind here.[15] What does "relation" mean here? "Relation" is not the law, but[16] there is a law governing relations—governing the relations between one moved body and another moved body. Do you see that?[17] [H]e does no longer speak of "necessary relation"—that is not a concession to the theistic view according to which the creation is free, is a free act of God; but also to the fact that the laws of motion do not have that kind of necessity which geometrical propositions have. If you take the laws of motion there is no inner contradiction in saying these relations would be different. But when you say that the circumference could very well be[18] $4r\pi$—that[19] leads to a contradiction. Now let[20] us go to the next paragraph.

[iii] *Spirit of Laws*, vol. I,bk. I, ch. 1, 1–2.
[iv] *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

Mr. Reinken: "Particular intelligent beings may have laws of their own making, but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice."

LS: No: "possible relations of justice."

Mr. Reinken: Okay. "—possible relations of justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle all the radii were not equal."[v]

LS: Yes. Now here he does not speak of "necessary relations," as we have seen. He speaks here of relations among intelligent beings; but he is most interested in the *possible* relations among them. Now "possible relations" means here, possible as opposed to actual. You can also say therefore possible relations are essential relations. And there are in particular possible relations of justice. And these possible relations of justice are comparable to mathematical necessity. No one has[21] to trace a circle, [there] needn't be any actual circle in the world, and yet the law, the propositions regarding the circle are valid. Mathematics deals with possible things, and in the same way, just as there can be possible circles, there can be possible human beings, possible relations among human beings, and therefore also possible rules of justice. Yes?

Student: Does this comparison mean that justice is simply a matter of, simply an arbitrary construction as a matter of definition.

LS: No, he takes mathematics very seriously. These are necessary. You cannot define by arbitrary definition, you can change the words, you can call a circle "bushy-bushy" if you want to but that doesn't affect the matter in the slightest. Your definition of bushy-bushy would lead to $2r\pi$.

Same Student: But[22] this is no argument in favor of justice, that society should be just.

LS: Yes, but up to now you have no reason to doubt that. I mean, is it not true that before there were men, men were possible. And therefore relations among men were possible, and therefore such relations among men as are just relations. In order to speak meaningfully of justice, you do not have to assume the actuality of men. This is the reason, why does Plato—I mean, what makes Plato's doctrine to some people at least so credible, his doctrine of ideas? That he is concerned with the mathematics on the one hand and with justice on the other. Mathematical objects are never actual. Every drawn circle is of course not a circle, but some approximation to a circle. Every just action or institution or intention of men, is not perfectly just. It's easy to see. Therefore in both mathematics and in moral matters the truth is not . . . concern actuality. It transcends actuality. That is the point to which he refers. Now let us read the next part.

Mr. Reinken: "We must therefore acknowledge relations of justice—"

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[v] *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

LS: "Equity," he says, and not without good reasons.

Mr. Reinken: "—of equity antecedent to the positive law by which they are established: as, for instance—"

LS: You see but the positive law nevertheless *establishes* these relations of equity.

Mr. Reinken: "—for instance, if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to show their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on."[vi]

LS: Yes.[23] You see here he makes it clearly in one point, these possible relations can also be called hypothetical relations: *If* they were, *if* there were a circle in existence it would have then these properties. *If* there were just relations among men, they would have this character. Contingent necessities, we can also say. He didn't say anything about such a contingency when he spoke on the laws of motion before, as you may have noticed. There are relations of equity anterior to the positive law, and that is what people ordinarily understood by natural law, but Montesquieu deviates from it a little bit, by saying the positive law establishes these relations. Now if there is a natural law, why does positive law have to establish them? One could say it makes it, enforces it, but not that, that was the point. They become actual only by positive law, that much is clear. Prior to that they are hypothetical, contingent, and so on. Does this remind you of something?

Mr. Reinken: You've often quoted[24] the business that natural law has to be promulgated in order to be—

LS: That is not here relevant, not immediately relevant. Something much more massive. Hobbes' *Leviathan*, chapter 15, at the end: "These dictates of reason"—namely the natural law—"men used to call by the name of laws, but improperly; for they are but conclusions or theorems concerning what conduceth to the conservation and defense of themselves, whereas law, properly, is the word of him that by right hath command over others." What Hobbes calls here "conclusions" or "theorems" is what Montesquieu means here by this hypothetical necessity. *If* there is a legislator, he would lay down these, but there may not be a legislator. Yes. So what picture do we have now? Everywhere law rules, and law has the character of necessary relations, though they differ, the case of mathematical laws and physical laws differs. But there is another difference which is much more important. Namely the difference of the laws governing intelligent beings and the laws governing non-intelligent beings. Of this he speaks in the next paragraph.

Mr. Reinken: "But the intelligent world is far from being so well governed as the physical. For though the former has also its laws, which of their own nature are

[vi] *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

invariable, it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error; and on the other, their nature requires them to be free agents—"

LS: Or "that they act by themselves."

Mr. Reinken: "Hence they do not steadily conform to their primitive laws; and even those of their own instituting they frequently infringe."

LS: Yes. In other words what is the difference between the laws governing intelligent beings and the laws governing everything else? They can be transgressed, and the others cannot be transgressed. You see when he speaks here, and before of *particular* intelligent beings. What does he mean by that?

Student: God?

LS: Exactly. So God would have to be defined precisely as the universal intelligent being, or as he said before, *la raison primitive*, the original reason. This we see in passing. Now he goes on.

Mr. Reinken: "When the brutes be governed by the general laws of motion, or by a particular movement, we cannot determine—"[vii]

LS: "One doesn't know," yes. In other words, the[25] old question up to the present day: can life be reduced to non-life ultimately or not? Yes.

Mr. Reinken: "Be that as it may, they have not a more intimate relation to God than the rest of the material world; and sensation is of no other use to them than in the relation they have either to other particular beings or themselves."[viii]

LS: The French word is *sentiment*, which means rather sentiment. You see also the use of "relation" but now in a different sense: relations with God. Which only confirms what I said before. The beasts have no special relations to God, the sentiments serve only in their relations among themselves. These are relations which are not laws but regulated by laws, but are these relations regulated in a necessary manner? In the case of the brutes, yes. Now we must say the clearest case of laws which we have hitherto at hand, as necessary relations which derive from the nature of things, are the Newtonian Laws, the clearest examples. With the mathematical laws that is not spelled out in any way. Now let us come to the next paragraph.

[vii] In original: "Whether brutes be governed by the general laws of motion, or by a particular movement, we cannot determine."

[viii] In original: "Be that as it may, they have not a more intimate relation to God than the rest of the material world; and sensation is of no other use to them than in the relation they have either to other particular beings or to themselves."

Mr. Reinken: "By the allurement of pleasure they preserve the individual, and by the same allurement they preserve their species. They have natural laws, because they are united by sensation, sentiment; positive laws they have none, because they are not connected by knowledge.[ix] And yet they do not invariably conform to their nature laws; these are better observed by vegetables, that have neither understanding nor sense."[x]

LS: Yes, in other words, the higher we go up, the smaller is the certainty of[26] obeying, or not transgressing, the natural laws. There is something much more important here. He speaks here of natural laws, of truths, in contradistinction to positive laws. Now, what is the difference between there and here? Natural laws require, at their basis, only sentiment, not knowledge. All laws which are based on knowledge are positive. A very grave and crucial assertion. Do you hear, can you spell that out, what I said now, why this is so crucial?

Student: I don't—I didn't see this. Is he saying that any law based on knowledge is a positive law or is the definition simply that a positive law must be based on knowledge?

LS: Sure,[27] it is not 100% explicit, but is it not 99% explicit? The brutes have natural laws because they are united by sentiment. They do not have positive laws because they are not united by knowledge. Yes?

Student: But association as a natural law for humanity, might also apply to the beasts. And therefore they could be said to have natural law. This would not reflect on the natural law of humanity—

LS: Yes, but the key point it seems to me is this: the traditional natural law can be said to be identical with the law of reason, and here the law of reason is by definition not the natural law. That's a very grave change. Now we will find more about it in the second chapter. Now let us read the end of this chapter.

Mr. Reinken: "Brutes are deprived of the high advantages which we have—"

LS: He calls them "supreme advantages."

Mr. Reinken: "—supreme advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it; even most of them are more attentive than we to self-preservation, and do not make so bad a use of their passions."

LS: Yes, now we come to man.

Mr. Reinken: "Man, as a physical being, is like other bodies governed by invariable laws—"

[ix] In original: "They have natural laws, because they are united by sensation; positive laws they have none, because they are not connected by knowledge."
[x] *Spirit of Laws*, vol. I, bk. I, ch. 1, 2–3.

LS: In other words, they fall if they cannot support it, and things like that. Yes?

Mr. Reinken: "As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loses; and as a sensible creature, he is hurried away by a thousand impetuous passions."

LS: "Impetuous" is a poetic addition of Mr. Nugent.

Mr. Reinken: "Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himself; philosophy has—"

LS: "the philosophers."

Mr. Reinken: "—the philosophers have provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty."[xi]

LS: "brought him back to his duties," yes. There are three kinds of laws which govern men: the laws of religion, the laws of morality, and the political and civil laws. And the laws—the central ones, the laws of morality—are taught by philosophers. Perhaps a merely rhetorical question, but I nevertheless ask you, does this distinction, these three kinds of laws as defined here, remind you of anything you've ever read elsewhere?

Well, Locke. In his *Essay Concerning Human Understanding*, I read to you, the paragraph has a title, "Moral rules need [a] Proof, hence they are not innate." [And]: "That men should keep their compacts is certainly a great and undeniable rule in morality. But yet, if a Christian, who has the view of happiness and misery in another life, be asked why a man must keep his word, he will give this as a reason: Because God, who has the power of eternal life and death, requires it of us. But if a Hobbist be asked why? he will answer: Because the public requires it, and the Leviathan will punish you if you do not. And if one of the old heathen philosophers had been asked, he would have answered: Because it was dishonest, below the dignity of a man, and opposite to virtue, the highest perfection of human nature, to do otherwise." Here you have: religion; [the] merely political, the Hobbist; and the old heathen philosophers.

Now Locke develops this, for those of you who would like a copy of this, Book I, chapter three, paragraph five. This is developed in greater lengths later, chapter 28, Book II, paragraphs 7 and 8. And he distinguishes the divine law, the civil law, and third the law of opinion or reputation, if I may so call it; the moral law is a law of opinion or reputation. The divine law is, of course, the divinely revealed law, and has a necessary relation to[28] another life. Civil law is a measure of crimes and innocence. And

[xi] *Spirit of Laws*, vol. I, bk. I, ch. 1, 3.

philosophical law is a measure of virtue and vice, and this is what he calls the law[29] of opinion or reputation, by which he means that the notions of virtue and vice exist only in opinion, but necessarily in opinion. They do not have the cognitive status of theoretical insights, since they are only opinion, but since they emerge everywhere where men live at a reasonable level of civilization, they are not arbitrary.

The laws of morality, the measure of virtue, is however for this very reason not the natural law. Because the natural law would not have this opinion character. And what is characteristic of Montesquieu's statement here, you will see, [is] that the laws of morality, taught by the philosophers, have nothing to do with life in society. As far as life in society is concerned, that is regulated only by the positive law. The laws of religion concern man's relations to God. The laws of morality concern man's relation to[30] himself, his self-knowledge, his self-control.

There is one point which I should mention, because it also throws light on the character of the whole argument. This is the only chapter on laws in general, three and a half pages, which we have and since the whole book deals with laws, [it is] of the utmost importance. And what I want to speak of briefly is the order of the subjects. When you turn to the first paragraph, he speaks of five kinds of beings: divinity, the material world, the intelligences superior to man, the brutes, and man. This is very disorderly: God, the material world, angels, brutes, man. It has a kind of order, but it is surely not a simple either ascending or descending order. Now when we turn to the execution of this program, we see he speaks first of God, then he speaks of the material world, then he speaks of the angels, but he doesn't—let us turn to this paragraph again, it's the eighth paragraph.

Mr. Reinken: "Particular intelligent beings."

LS: You know he had said formerly, "intelligences superior to men." That is now developed. Read it again from this point of view.

Mr. Reinken: "Particular intelligent beings may have laws of their own making, but they have some likewise which they never made."[xii]

LS:[31] Let us now replace—speak of angels to make it quite clear. There may be positive laws by which angels regulate their conduct, as well as natural laws. So that is very strange, that here when he speaks in fact of the intelligence superior to men, he speaks only of men. The angels are tacitly dropped. Now there is one very simple thing: if you drop the angels altogether, the intelligence superior to men, you get this order: God, the material world (as the base of everything else), brutes, and men. Then it becomes ordered. So the disorder, considered, leads to the order.

Now this is all I want to say about the first chapter. The chapter is unintelligible if one does not consider the fact that, in discussing the law in general, Montesquieu has to discuss the theological problem. Concerning God, not only is He the originator of the

[xii] *Spirit of Laws*, vol. I, bk. I, ch. 1, 2.

divine law and the natural law, but of man himself, and the whole universe. And here he intimates the view according to which the universe is necessarily created because God cannot possibly[32] act against his wisdom and his goodness[33]. [T]herefore if the creative act is a communication of goodness, there is no reason why God should not eternally create, and therefore the creation is co-eternal with God. This is the tacit argument here. And there is no free creation properly speaking. And furthermore this creation is guided by necessities. God chooses the best, not arbitrarily, but necessarily, being a wise being. And therefore as he put it the creation which seems to be an arbitrary act, supposes as invariable rules as the fatality of the atheists. Now is there any other point which you want to bring up? Yes?

Student: In regard to what you just said about the order of those five types of beings. You said once he dropped the angels, the order became intelligible. It's not intelligible to me because—

LS:[34] But read the first chapter of Genesis. What is created first?

Student: The material world.

LS: Then the brutes and man.

Student: Oh, I see.

LS: Yes. And this is not—I mean I don't wish to pass the buck to the first page of the Bible, but the biblical order is an intelligible and rational order. There could be sea and land without men. But there couldn't be man without sea and land. There could be lions and tigers without men, or dogs and cats, but men couldn't live without brutes, and the brutes couldn't live without plants. What Montesquieu suggests in a way—drop the angels and the order will become much clearer[35]—has a grave implication. Namely, that the whole theological tradition took too angelic a view of man. Not that they regarded man as good, on the contrary, but man's destiny, and what was demanded of men, was too angelic. And by dropping that out, and seeing man in the context of the other earthly beings, one would get a more practical political teaching.

I have to say a few things at least about the next two chapters. Now the next chapter deals with the laws of nature. Will you read that, Mr. Reinken.

Mr. Reinken: "Antecedent to the above-mentioned laws—"

LS: Meaning also to the laws taught by the philosophers, the laws of morality.

Mr. Reinken: "—are those of nature, so called, because they derive their force entirely from our frame and existence—"

LS: "derived entirely from the constitution of our being."

Mr. Reinken: "—the constitution of our being. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society: the laws received in such a state would be those of nature."

LS: "The laws of nature will be those which he would receive in such a state." Now what does this mean? The laws of nature are not the moral laws as taught by philosophers, this much is clear. But the second point: how can we find the natural laws? We must consider man in what condition? Montesquieu doesn't use the common term for that.

Student: Well, it would be called the state of nature.

LS: In the state of nature, that is crucial. Now go on.

Mr. Reinken: "The law which, impressing on our minds the idea of a Creator, inclines us towards Him, is the first in importance, though not in order, of natural laws. Man in a state of nature would have the faculty of knowing, before he had acquired any knowledge—"

LS: No, "would have rather the faculty of knowing than he would have knowledge."

Mr. Reinken: "—Plain it is that his first ideas would not be of a speculative nature—"

LS: Concerning God, for example.

Mr. Reinken: "—he would think of the preservation of his being, before he would investigate its origin. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive; as appears from instances (were there any necessity of proving it) of savages found in forests, trembling at the motion of a leaf, and flying from every shadow."

LS: In the state of nature there are no knowledges, because man has not yet developed them. And here's where the promulgation is a concern. He has only sentiments, i.e. things man shares with the brutes. Self-preservation, sure, man is concerned with it, but so are the brutes. "In this state," he says, "everyone feels himself as inferior, barely does everyone feel himself equal. Hence one would not try to attack, and peace would be the first natural law. Now who said that peace is the first natural law."[xiii]

Student: Hobbes.

LS: Hobbes, sure. But while he follows Hobbes, he gives the thought an anti-Hobbian turn in this sequel.

Mr. Reinken: "The natural impulse or desire which Hobbes attributes to mankind of subduing one another is far from being well founded. The idea of empire and dominion is

[xiii] *Spirit of Laws*, vol. I, bk. I, ch. 2. Strauss's own translation.

so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.

"Hobbes inquires, 'For what reason go men armed, and have locks and keys to fasten their doors, if they be not naturally in a state of war?' But is it not obvious that he attributes to mankind before the establishment of society what can happen but in consequence of this establishment, which furnishes them with motives for hostile attacks and self-defence?"

LS: So in other words what he objects to—Hobbes' natural man is indeed characterized by desire for glory, superiority to others[36]. [H]ere he makes the point, in this state in which man lived, he cannot possibly have any notions of superiority. He here anticipates Rousseau's criticism of Hobbes. Hobbes's natural man, man in the state of nature, is *not* the natural man, but already a man who is a product of civil society. Man in the state of nature is a weak, timid being, and not a nasty being. Yes.

Mr. Reinken: "Next to a sense of his weakness man would soon find that of his wants. Hence another law of nature would prompt him to seek for nourishment."[xiv]

LS: Yes, that is a central point here. Whose point was that? That food is the most fundamental consideration, a thing about which Hobbes had been rather silent. Locke. And then he speaks also of the sexual desire as the third one, which would be natural, the three desires: self-preservation, food (if you separate that from self-preservation), and sexual desires are, as we all know, not specifically human. And now the last paragraph of this chapter.

Mr. Reinken: "Besides the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge; and thence arises a second tie, which brutes have not.—"

LS: "which the other animals have not."

Mr. Reinken: "—the other animals have not. Mankind have, therefore, a new motive for uniting; and a fourth law of nature results from the desire of living in society."[xv]

LS: Yes, very well, it's the fourth law of nature, but can they have this desire in the state of nature?

Student: Not if they don't have—

LS: Knowledge, no actualization of knowledge. So we have only these three things which man shares with the brutes. And that is all that remains of the law of nature, *if* as

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[xiv] *Spirit of Laws*, vol. I, bk. I, ch. 2, 3–4.
[xv] *Spirit of Laws*, vol. I, bk. I, ch. 2, 4–5. In original: "Mankind have, therefore, a new motive of uniting; and a fourth law of nature results from the desire of living in society."

he says, the law of nature in its purity can be found only in the state of nature. Mr. Shulsky.

Mr. Shulsky: Is this first law though a law that's common with the other animals, the question of peace. If that derives from man's fears, then it wouldn't be something that the other animals could have. He just said that the animals have some advantages over man, one of them being that they don't have man's fears, and they're not aware of death, so that it would seem that this fear—

LS: But ordinarily animals of the same species do not attack one another. Under certain conditions [of] scarcity of food, sexual competitions, they do, sure, but this is also the case of men in the state of nature. If there is only one female around, and there are six males, then there is likely to be some trouble. But the same would also be true among deer, and among cows, and bulls, and so forth.

Mr. Shulsky: The fear of death wouldn't be there among the animals, so that the desire for society—

LS: Yes, but does man in the state of nature have the fear of death as we have it? I mean to have the fear of death if someone tries to strangle you,[37] that is true of an animal as well as a man, a brute as well as a man. But the long-range prospect of death, that is the point, can it be there? Can it exist in this space?

To repeat the main point, what Montesquieu here only intimates, but I think very clearly, was fully developed by Rousseau in his *Discourse on the Origin of Inequality*, where he takes issue with Hobbes's whole teaching and develops it, by giving a detailed picture, infinitely more detailed than Montesquieu does here, of man in the state of nature. And man in the state of nature is simply a stupid animal, as Rousseau calls him, and as Montesquieu suggests here.

Let us make a stop here and reflect on two key points which have emerged up to this point. What is clear enough is that in the first place, a change in the meaning of "law." And that becomes very clear if one compares the definition of law given by Hooker with the definition of law given by Spinoza. And Montesquieu is much closer to Spinoza, to put it mildly, than to Hooker. Law as understood by Montesquieu, and by Spinoza, has no relation whatsoever to *ends*, whereas law in the traditional jurists, as presented by Hooker, is necessarily related—even the laws regarding the fall of bodies—is related to ends. Teleological law and non-teleological law.

And now connected, there is a change in the meaning of "natural law," and here Spinoza wouldn't help us so much as Hobbes. A comparison between Hooker and Hobbes would make these differences very clear. Still better of course is to contrast Hobbes with Thomas Aquinas on natural law. Since there will be some students here who have never heard about these things, I will bore the older ones by repeating some things which I have said in the past.

Now what is the radical change regarding natural law which has taken place in modern times and is presupposed by Montesquieu? I mention four points. The first: according to Thomas Aquinas the natural law prescribes what is required for the fulfillment or perfection of man's natural inclinations. And he mentions three such basic inclinations. The first is self-preservation. The second is preservation of the species. And the third is knowledge of God. These three inclinations—and of course, that is in order of ascent. Preservation of the species is higher than the preservation of the individual, and knowledge of God is higher than the two others.

Now what Hobbes does in the first place, one can say that he drops the two higher ones. The preservation of the species, that includes by the way—I should have been more exact—the social, the social inclination in general. Hobbes drops it. Self-preservation is the sole basis. And society has to be derived from the desire for self-preservation. He enters society not because we are by nature social, which Hobbes denies, but because we want to preserve ourselves, and we can preserve ourselves much better in society—although in Chicago you don't notice it everyday —than outside society. Now why does Hobbes do this? [writing on board]. Is it not madness to reduce man to the lowest in him?

Student: The lowest in our motivation is the strongest, you can build on that.

LS: Yes, in other words, when someone points a gun at you, almost all men will take cover. You can bank on that, but whether they would dedicate themselves to the fatherland, to their polis, disregarding their private interests, on that you cannot bank. So in other words if you get a fool-proof teaching on the basis of the lowest, then you get the most solid teaching.

The second difference is this. For the tradition, including of course Thomas Aquinas and Hooker, primary phenomenon, moral phenomenon, has the character of duties. Self-preservation itself is a duty, hence the prohibition against suicide. Rights, they didn't speak much of rights, but when they did, they were[38] derivative from duties. The radical change which Hobbes effects, is according to him,[39] the fundamental moral phenomenon of right is the right to self-preservation. And all duties are derivative from that, and, as a matter of fact, less certain than that right is. This includes, these first and second rules prove the following point: self-preservation is not possible without living in society and men cannot live in society without being sociable; and therefore[40] sociability, or peaceableness, is identical with virtue. The other virtues do not count. That is implied in these steps. So virtue is only social.

Now the third point is this. Since Hobbes and all his followers, the natural law teaching is essentially a teaching about man in the state of nature. This didn't exist in the earlier teaching. Generally speaking[41] man was regarded as essentially social, and therefore a state of nature in Hobbes's sense was regarded as impossible. The implication of the notion of the state of nature is that man is not by nature social. He becomes social through calculation, through seeing that he cannot preserve himself, and surely not preserve himself comfortably, without living in society.

The fourth and last point on this, the natural law doctrines of Hobbes and his followers, the characteristically modern natural law teachers, present a natural law teaching which is above all a teaching of natural public law. For example, in the case of Hobbes, the core of his teaching is the teaching regarding the rights of sovereigns, i.e. public laws, and similar things in the case of Locke and Rousseau. And this leads to the consequence that modern natural law, in contradistinction to pre-modern natural law, is in fact revolutionary, as we can see. Because it sets up one kind of political order as the only kind that is legitimate. And since it's the only kind which is legitimate, it doesn't exist everywhere. In fact, it exists nowhere at the time. It is necessary, it leads to revolution.

Now of course Hobbes is called, by some people who do not know what they're talking about, a conservative man. But the sovereignty teaching is a very revolutionary teaching, it means that the king can without the slightest warrant, take away powers which limit him, because according to the Hobbesian teaching, sovereignty cannot be limited. Now if there is, say, an independent judiciary, or parliament, or counsel, which has powers independent of the sovereign, he may tolerate it if he thinks it's convenient, but he may as well abolish it, as the same is true in different ways of Locke's teaching. Absolute monarchy, according to Hobbes, is against natural law. Still more clearly in the case of Rousseau, every legitimate government is republican. This I thought I should remind you of, because otherwise, you will not be in a position to understand Montesquieu's argument.

Now let us say a few words about the third chapter, that we at least do this much. Let us turn to the first sentence of chapter 3.

Mr. Reinken: "As soon as man enters into a state of society he loses the sense of his weakness; equality ceases, and then commences the state of war."[xvi]

LS: Yes. That is good. But the question is, if this is so, can natural law survive the state of nature, if they are so radically different? What would you say? Since natural law is relative to the state of nature, and since the state of nature is abolished by the establishment of society, does not the law of nature also fall down?

Student: . . . .

LS: Yes for example? Yes, Mr. Moulton.

Mr. Moulton: I had a question about the laws of nature being exclusively the province of the state of nature. He says, he only says that to know the laws of nature is best, we should look into the state of nature. I don't see where you got this idea that they exist only in the state of nature.

LS: That is true, that is a good point. But will they not have to be modified in some way? All right, let us leave it at that.

[xvi] *Spirit of Laws*, vol. I, bk. I, ch. 3, 5.

Now he says here in another utterance, man had to unite itself through convention, and do by means of civil laws, what natural law, or natural right, had done to begin with. In other words, the end served by the natural law remains the same as the end served by good political and civil laws. Let us skip the next paragraph.

Mr. Reinken: "These two different kinds of states give—"

LS: "ideas of war." Well there will be a war within society and a war among society.

Mr. Reinken: "—internal and foreign wars give rise to human laws. Considered as inhabitants of so great a planet, which necessarily contains a variety of nations, they have laws relating to their mutual intercourse, which is what we call the law of nations."

LS: Yes, you see here, the tacit exclusion of any world[42] state. The reason here given is that the planet is so great, that you cannot possibly govern from one center. Let's go to the next paragraph.

Mr. Reinken: "The law of nations is naturally founded on this principle—"

LS: No, "naturally" is used very emphatically, "*by nature*."

Mr. Reinken: "—that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as possible, without prejudicing their real interests."

LS: Yes, in other words, you come first. What did you want to say?

Student: . . . used the word naturally there . . . in chapter 1 the hypothesis . . . .

LS: I beg your pardon?

Student: . . . The natural laws were talked about before in chapter 1 . . . .

LS: He called them relations of equity. They are not natural laws. The second chapter deals with the natural laws. The natural laws are only these simple things which are the basic inclinations of man which he shares with the brutes, not more. But the question—if this is of course normative, as all law is—[about] the rule regarding the law of nations, the question is, of course, how is this derived from the natural law as discussed in the preceding chapter? Well if we assume it's a fundamental principle[43] [is] self preservation, and this is of course universally true, of every human being, then this would follow. If in order to preserve ourselves, we must preserve the others, then this follows, to preserve men to the highest degree possible, that's to say, as long as our own self-preservation is not in danger, that's clear. But in case of doubt, if our own self-preservation is not in danger, we must preserve as many men as we can. That is roughly the argument behind it, not developed yet. Now let us turn to the other half of the mix.

Mr. Reinken: "All countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners: for they send and receive ambassadors, and understand the rights of war and peace. The mischief is that their law of nations is not founded on true principles."

LS: In order words the true law of nature would forbid cannibalism, the principle being self-preservation of all men. Whether that is legitimately derived, that's a long question. Now the next paragraph.

Mr. Reinken: "Besides the law of nations relating to all societies, there is a polity or civil constitution—"

LS: No, no, "there is a political right for each."

Mr. Reinken: "—there is a political right for each particularly considered."

LS: No "particularly."

Mr. Reinken: "—for each. No society can subsist without a form of government—"

LS: "Without a government." In other words, no withering away of the state.

Mr. Reinken: "'The united strength of individuals,' as Gravinae well observes, 'constitutes what we call the body politic.'"

LS: "The political state." "'The union of all particular forces,' says Gravina very well, 'forms what one calls the political state.'" So that is what we call the state. Let us read also a little bit further on. "The particular forces," meaning the forces of individuals, "cannot unite—"

Mr. Reinken: "—without a conjunction of all their wills. 'The conjunction of those wills,' as Gravina again very justly observes, 'is what we call the civil state.'"

LS: Now these two definitions together are a definition of the state. What strikes you about these two definitions? Union of the particular forces and particular wills—that is the state. Gravina is not an author comparable to Rousseau in importance, and it is not quite clear to me why Montesquieu chose him as his authority here. But the most obvious thing is there is no reference to the end of the state here. Even in Hobbes's definition you find end of the state mentioned, I mean, for the preservation of men. But we can assume this is implied by Montesquieu. Next paragraph. After all, the subject of this work is not the state, as appears from the title, but law.

Mr. Reinken: "Law in general is human reason, inasmuch as it governs all the inhabitants of the earth."

LS: "all the peoples of the earth." In spite of their infinite varieties.

Mr. Reinken: "The political and civil laws of each nation ought to be only the particular cases in which human reason is applied."

LS: Yes,[44] you see he gives the definition of law in general, but he does not give a definition of political and civil laws of each nation in particular. He only says what they *ought* to be. Let us read a little bit more to get a notion.

Mr. Reinken: "They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another.

"They should be in relation to the nature and principle of each government: whether they form it, as may be said of politic laws; or whether they support it, as in the case of civil institutions.

"They should be in relation—"

LS: "They should be relative." Let us keep this word with which we are so familiar. "They should be relative—"

Mr. Reinken: "—to the climate of each country."[xvii]

LS: Yes, to the "physical character of the country." But you see, they *ought* to be. The definition of law in general, as you have seen, is: law is only for man and originates in man. Law is human reason, not the primitive reason[45]— all men, originates in man and relates to man as such. This is of course incompatible with the usage before, as we have seen. In this connection, I would like to mention that, as far as I know, Hobbes never uses, applies the term "law" to such things as the Newtonian law; there are only laws governing human conduct.

Now if law is human reason, and natural law is sentiment, there is no natural law proper. This however does—this isn't everything. But this does not mean in Montesquieu so-called legal positivism, meaning law is what the legislator says and there is no way of criticizing the legislator in a rational manner. There are criteria which enable us to judge whether a law is good or bad. And therefore there is the possibility of a normative philosophy of law or political science, but that is of course the question: what is that norm? The only norm which is unequivocal, of which we have heard, is the natural law in Montesquieu's sense: these primary desires, for self-preservation, food, and sex, or procreation. Is this basis sufficient for distinguishing between good or bad laws? One could say differently that all is good if it is conducive to the happiness of the people concerned. But this does not help us very much if we do not know what happiness is. So we must look further on. So we must see, in other words,[46] what is Montesquieu's norm for judging? We have an intimation it is human reason. Idiotic acts cannot be true laws.

[xvii] *Spirit of Laws*, vol. I, bk. I, ch. 3, 5–6.

What is the definition—when he gives a description of despotic government. Oh yes, Book 5, chapter 13, consists of a single sentence.

Mr. Reinken: "When the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit. This is an emblem of despotic government."[xviii]

LS: "This is a despotic government." In other words, an idiotism, and here stupidity, and therefore a good law can never be stupid. But whether this is sufficient for establishing goodness of law in general remains a question.

I repeat, the notion of natural law which Montesquieu enforces is fundamentally the Hobbian-Lockian view. But there is a great difference between Montesquieu on the one hand, and Hobbes and Locke on the other. Hobbes and Locke speak in their works of all states as they should be. Montesquieu suggests that what can be said about all states is fairly little, because of the infinite variety due to the infinite variety of circumstances.

One more point as a transition to what we shall discuss next time. We have seen that a standard was referred to or established by Montesquieu, that is natural law as he understands it. But he also refers to the philosopher's teaching. Philosophers gave man moral teaching proper.[47] [I]f we call that "virtue," what the philosophers think about, what is the relation between virtue and these simple basic rights of self-preservation, the natural right. This is a question. Montesquieu is now going to speak of virtue in the sequel. And we hear here next time Mr. Bruell's paper on Books II and III. And I see already with my mind's eye that we have to add one more meeting to these meetings, because we devoted the whole meeting, quite reasonably I think, to the First Book, which is the basic book.

Student: Does Montesquieu not leave the question unanswered or even perhaps unraised here, in that he includes in the circumstances not only natural circumstances which cannot be changed by the civil law, but also occupations and such, things that come about in part by the operation of law, and therefore can be changed by the operation of law. Towards what end then are these laws to be directed?

LS: Yes, that is a very necessary question. One must see, for example,[48] the kinds of laws you have in mind. Well let us take the institution of the harem, which he discusses at great length in his[49] useful *Persian Letters*. Now this was established by legislation. Can the question be raised: is the institution of the harem conducive to human happiness? Now it might be conducive to the happiness of some, or many, husbands, but is it conducive to the happiness of the wives? So [if] this should be an important consideration, which we must not prejudge, then we might have to say the harem is a bad institution. Unless there should be a nation in which there are three times as many girls as boys, as the question arises, is it better for this excess female population to become old spinsters, perhaps bitter spinsters, and not rather be second and third wives? These are very subtle and important questions to which we should apply our minds when we come to them. Another one raised his hand?

[xviii] *Spirit of Laws*, vol. I, bk. V, ch. 13, 57.

Student: I just wondered if the second volume is separable from the first?

LS: Yes, not quite. But you see this is one of the concessions we need to make to our weaknesses. I did read once *The Spirit of Laws* in a single session, but that was in a semester, which is more than a quarter, and I thought it would be better, though I am running some risks, to proceed at a more leisurely pace, to read it in two quarters, which has the obvious disadvantage that some of you may be able to come to this class this quarter and not the next, and vice versa; but most solutions are imperfect. And that's the last question.

Student: You spoke of the similarity between Montesquieu on the one hand and Hobbes and Locke on the other hand and the difference. I caught the difference, Hobbes and Locke speaking of all states as opposed to speaking of the great variety, but I didn't catch what you said was the main similarity between Montesquieu on the one hand and Hobbes and Locke on the other.

LS: You should know if you have been present today. The natural law teaching. There is only one—the fundamental law is like self-preservation,[50] a bit more. So the natural law is not the law of reason.

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[1] Deleted "LS: Is there anyone here taking this course for credit who has not taken a paper? No one. So I have to ... you have not, you are taking this course for credit? What's your name?

Student: Stephen Roche.

LS: Only the second name. No. You read the fifteenth paper, which ... oh, you'll read your paper on the fifteenth meeting, which is chapter ... on Book 19. Well, it should be ... these things should be clear. Good."

[2] Deleted "now."

[3] Deleted "with which we."

[4] Deleted "The."

[5] Deleted "and that."

[6] Deleted "can…."

[7] Deleted "Well there was…."

[8] Deleted he speaks."

[9] Deleted "now."

[10] Deleted "They…."

[11] Deleted "is…."

[12] Deleted "now."

[13] Deleted "the…."

[14] Deleted "Now he doesn't speak here ... what is."

[15] Deleted "These are ... yes but these…."

[16] Deleted "'relation' is not the law but."

[17] Deleted "And this…but."

[18] Deleted "of a circle could very well be."

[19] Deleted "is…."

[20] Deleted "us…let."

[21] Deleted "to have."

[22] Deleted "it doesn't…."

[23] Deleted "Now let us see what…."

[24] Deleted "the."

[25] Deleted "only."

[26] Deleted "being."

[27] Deleted "but."

[28] Deleted "the."

[29] Deleted "for."

[30] Deleted "his."

[31] Deleted "So in other words…."

[32] Deleted "be…."

[33] Deleted "and."

[34] Deleted "Read."

[35] Deleted "and that."

[36] Deleted "and."

[37] Deleted "yes, but"

[38] Deleted "derived."

[39] Deleted "a."

[40] Deleted "it's."

[41] Deleted "because."

[42] Deleted "of."

[43] Deleted "it's."

[44] Deleted "is this."

[45] Deleted "and as he goes on."

[46] Deleted "where does."

[47] Deleted "What's the relation between."

[48] Deleted "of."

[49] Deleted "very."

[50] Deleted "is."